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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/716,318

11/17/2003

David E. Fritsche JR.

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NATH & ASSOCIATES  
112 South West Street  
Alexandria, VA 22314

EXAMINER

PARKER, BRANDI P

ART UNIT

PAPER NUMBER

3623

MAIL DATE

DELIVERY MODE

09/12/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/716,318	<b>Applicant(s)</b> FRITSCH ET AL.	
	<b>Examiner</b> BRANDI P. PARKER	<b>Art Unit</b> 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Acknowledgements***

1. Claims 1-14 are pending in this Office Action.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Montague (US 6298332).
4. With respect to claim 1, Montague teaches a method of distributing multimedia marketing content and collecting marketing data, the method comprising the steps of:
  - a. generating a plurality of auto-loading storage devices containing automatically loadable multimedia marketing content and one or more automatically loadable marketing data collection programs (Figure 3; column/line 1/66-2/3, regarding data being delivered to a user via CD-ROM);

- b. providing a multimedia content serving system and a marketing data collection system on a communications network (column/line 4/44-52, regarding network and servers for managing and storing communications);
- c. sending the auto-loading storage devices to remote users, each said remote user having use remote computing apparatus, whereby each remote user should receive at least one among the plurality of auto-loading storage devices (column/line 15/59-65, regarding the CD-ROM tags being attached to a product to be delivered to a user);
- d. causing the multimedia content serving system and data collection system to:
  - i. automatically network link with remote user apparatus through the communications network when one or more remote users access the multimedia content serving system and data collection system through the remote user's remote computing apparatus (column/line 2/29-51, regarding the internet linkage apparatus);
  - ii. for each said accessing remote user:

(1) automatically transferring second automatically loadable multimedia marketing content to the remote user's remote computing apparatus, whereby the remote computing apparatus may automatically play the second automatically loadable multimedia marketing content (column/line 15/66-16/6, regarding workstations having ability to obtain information from the servers and deliver data to the databases of the servers) ; and

(2) automatically receiving and processing remote user marketing data transferred from the remote user's remote computing apparatus by the automatically loadable marketing data collection program running on the remote user's remote computing apparatus (column/line 1/56-61, regarding facilitating an exchange of information between vendors and purchasers; .

5. As to claim 2, Montague teaches the marketing content distribution and information collection method of claim 1 wherein the auto-loading storage devices comprise digital storage media and the communications network comprises the Internet (column/line 2/29-51, regarding CD-ROM as well as internet linkage apparatus).

6. Regarding claims 3-4, Montague teaches the marketing content distribution and information collection method of claim 1 wherein multimedia content serving system and

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marketing data collection system cooperatively communicate with web site systems, whereby each accessing user's computing apparatus may receive second automatically loadable multimedia content and transfer remote user marketing data to said marketing data collection system (column/line 15/66-16/6, regarding workstations having ability to obtain information from the servers and deliver data to the databases of the servers).

7. Regarding claims 11-14, Montague teaches the marketing content distribution and information collection method of claim 5 wherein the remote user marketing data processing step D(ii) further comprises distributing remote user marketing user data to said third party (column/line 9/20-25, regarding data transmission to and from a vendor or independent third party).

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5-10 rejected under 35 U.S.C. 103(a) as being unpatentable over Montague (US 6298332).

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10. With respect to claims 5-6, Montague teaches the marketing content distribution and information collection method of claim 1 that can be distributed to a third party party (column/line 9/20-25, regarding data transmission to and from a vendor or independent third party). Montague does not directly teach receiving revenue from the third party distribution. However, it is an old and well known practice for a third party to compensate a company for the marketing and advertising of the third party's product. Therefore, it would have been obvious to one with ordinary skill in the art to include receiving revenue from a third party in connection with distributing the third party's marketing content since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

11. As to claims 7-10, Montague teaches the marketing content distribution and information collection method of claim 1 in which the storage device is delivered to a user (column/line 15/59-65, regarding the CD-ROM tags being attached to a product to be delivered to a user). Montague does not directly teach sending the storage device through a manual shipping service. However, sending items through manual shipping services such as the United States Postal Service is old and well known in the art. Therefore, it would have been obvious to one with ordinary skill in the art to send the auto-loading storage devices by a manual shipping service since the claimed invention is merely a combination of old elements, and in the combination each element merely

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would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Donahue et al (US 5694334, regarding electronic distribution of digital multi-media information), Ayres et al (US 2003/0078986, regarding distributed multimedia transfer system).

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDI P. PARKER whose telephone number is (571) 272-9796. The examiner can normally be reached on Mon-Thurs. 8-5pm.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRANDI P PARKER/  
Examiner, Art Unit 3623

/Andre Boyce/  
Primary Examiner, Art Unit 3623